

City of Houston, Texas, Ordinance No. 2007-\_\_\_\_\_

**AN ORDINANCE AMENDING ARTICLE VII OF CHAPTER 33 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO HISTORIC PRESERVATION; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; CONTAINING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

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**WHEREAS**, the City Council of the City of Houston adopted Ordinance No. 95-228 and subsequent amendments thereto, codified as Article VII of the Code of Ordinances, City of Houston, Texas (the “Historic Preservation Ordinance”), which established a program of historic preservation for landmarks, protected landmarks, historic districts and archaeological sites within the City; and

**WHEREAS**, the City Council finds that the Historic Preservation Ordinance has been beneficial to the health, safety, and welfare of the public by preserving historic assets within the City; and

**WHEREAS**, the City Council finds that a committee of members of the HAHC has evaluated the effectiveness of the Historic Preservation Ordinance and recommended certain amendments to improve the effectiveness and administration of the ordinance; and

**WHEREAS**, the City Council finds that the HAHC conducted a public hearing on and considered the proposed amendments at its regularly scheduled meeting on March 14, 2007, and recommended approval of the proposed amendments; and

**WHEREAS**, the City Council finds that the Houston Planning Commission conducted a hearing on and considered the proposed amendments at its regularly

scheduled meeting on March 15, 2007, and recommended approval of the proposed amendments; and

**WHEREAS**, the City Council finds that the adoption of amendments to the Ordinance would further enhance the benefits derived to the public health, safety, and welfare through preservation of historic assets; **NOW, THEREFORE**;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** That Section 33-203 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Subsection (d), which shall read as follows:

“(d) If a landmark or protected landmark or a contributing or potentially contributing structure located in an historic district is demolished without a certificate of appropriateness required by this article or a 90-day waiver certificate issued pursuant to section 33-250 of this Code, the building official shall not issue a building permit, and no other person shall issue any other city permit, for the site where the landmark, protected landmark or structure was formerly located for a period of 5 years after the date of the demolition. The director shall cause notice of suspension of permitting pursuant to this subsection to be recorded in the real property records of the county in which the property is located. The owner of the site may appeal the denial of a permit under this subsection to the HAHC, which shall consider the circumstances under which the demolition occurred and whether the applicant has demonstrated an unreasonable economic hardship or unusual or compelling circumstance. The decision of the HAHC on the appeal shall be final.”

**Section 3.** That Item (1) of Subsection (b) of Section 33-222 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(1) The owners of at least 51 percent of the tracts in the proposed district, which tracts shall constitute 51 percent of the land area

within the proposed district exclusive of street, alley and fee simple pipeline or utility rights-of-way and publicly owned land, as determined by the planning official. In case of a dispute over whether the percentage requirements have been satisfied, it shall be the burden of the challenger to establish by a preponderance of the evidence through the real property records of the county or counties in which the proposed historic district is located or other public records that the applicants have not satisfied the percentage requirements; or”

**Section 4.** That Section 33-223 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**“Sec. 33-223. Property pending designation.**

(a) Upon initiation of an application for designation of a landmark, archaeological site or historic district that satisfies the minimum age criteria of section 33-224(b) of this Code, the building, structure, object or site proposed for designation as a landmark or archaeological site and any building, structure, object or site located in an area proposed for designation as an historic district shall be subject to the requirements of division 4 of this article as though the building, structure, object, site or area had been designated by the city council. The protected status provided by the foregoing shall not apply to any building, structure or object that is less than 50 years old or that is located in a proposed historic district in which the majority of buildings, structures and objects are less than 50 years old. If the HAHC denies an application for certificate of non-designation for any property pursuant to section 33-228 of this Code, the property shall also be subject to the provisions of this section.

(b) The protected status provided in subsection (a) above ends on the earliest of the following dates:

- (1) The day after an action of the city council rejecting an application for designation;
- (2) In the case of an application initiated by the HAHC, the day after an action of the HAHC recommending against the designation;

- (3) In the case of an application for designation of a landmark or archaeological site initiated by the property owner, the day after the withdrawal of the application by the property owner; or
- (4) In the case of the denial of a certificate of non-designation by the HAHC, the 181<sup>st</sup> day after the decision of the HAHC.

For purposes of this article, an application for designation is initiated immediately upon the occurrence of either the filing of an application for designation by the requisite owners pursuant to section 33-222 of this Code or, in the case of an application initiated by the HAHC, the date a majority of the HAHC votes to authorize the preparation of an application."

**Section 5.** That Subsection (a) of Section 33-226 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(a) The planning official shall give notice of a public hearing before the HAHC on the designation of a landmark or archaeological site initiated by the HAHC not less than 30 days before the date of the public hearing to the owner of the property at the name and address as shown on the recently approved ad valorem tax roll of the city. If the notice address for the owner as shown on the most recently approved ad valorem tax roll of the city does not coincide with the street address of the property, then the planning official shall also send a notice addressed 'occupant' to the street address for the proposed landmark or archaeological site. The planning director shall also publish notice of the public hearing in a newspaper of general circulation in the city not less than 30 days before the date of the public hearing."

**Section 6.** That Item (1) of Subsection (c) of Section 33-226 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

- "(1) Notice shall be given by mail (i) if the owner joined in the application, to the owner or the owner's representative at the notice address shown on the application; (ii) if the owner did not join in the application, to the name and address shown on the most recently approved ad valorem tax roll of the city, and, if the notice address for the owner as shown on the most recently approved ad valorem tax roll of the city does not coincide with the street address of the property, then a notice

shall also be sent addressed 'occupant' to the street address for the property proposed to be included in the historic district; and (iii) to any civic associations registered with the planning official within whose service area all or part of the historic district is located;"

**Section 7.** That Subsection (d) of Section 33-226 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(d) At each public hearing conducted under this division before the HAHC, the HAHC, upon making its recommendation to the commission regarding an application for landmark, protected landmark or historic district designation, shall also announce the date of the public hearing at which the commission will consider the application."

**Section 8.** That Section 33-228 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

**"Sec. 33-228. Certificate of non-designation.**

(a) The owner or owner's agent of any property may submit an application for a certificate of non-designation with respect to any building, structure, object, site, property or area that has not been designated as a landmark, protected landmark, contributing or potentially contributing structure in an historic district or an archaeological site. Applications shall be filed with the planning official and shall contain the following information:

- (1) The name, address and daytime telephone number of the owner and the applicant, if different from the owner;
- (2) The address and general description of the property that is the subject of the application;
- (3) A current photograph of the property that is the subject of the application; and
- (4) Information demonstrating whether the property is eligible for designation as a landmark or protected landmark or as a contributing or potentially contributing structure in an historic district or an archaeological site.

The application for a certificate of non-designation shall be accompanied by a nonrefundable fee of \$25.00.

(b) The HAHC shall consider an application for certificate of non-designation at a regular meeting within 35 days of the date a complete application for the certificate is filed with the planning official or at a later time mutually agreed upon in writing by the planning official and the applicant. The HAHC may continue its consideration of an application for a certificate of designation to its next regular meeting upon finding that specific information is needed by the HAHC to enable it to reach its decision or upon agreement with the applicant for a continuance. If the HAHC does not act upon an application for a certificate of non-designation within the later of 70 days from the date the application is filed with the planning official or 35 days after the date mutually agreed on by the applicant and planning official for review of the application by the HAHC, the application shall be deemed approved, unless the applicant consents in writing to an extension to a specified date.

(c) The HAHC shall not grant the certificate of non-designation if it finds any of the following:

- (1) The building, structure, object, site, property or area is the subject of an pending application for designation as a landmark, protected landmark or archaeological site;
- (2) The building, structure, object, site, property or area is within an area that is the subject of a pending application for designation of an historic district;
- (3) The building, structure, object, site, property or area is eligible for designation as a landmark, protected landmark or archaeological site;
- (4) The building, structure, object, site, property or area is located in an area that is eligible for designation as an historic district;  
or
- (5) The building, structure, object, site, property or area is located in an area that is eligible for designation as an historic district, and meets the criteria for contributing or potentially contributing structure if the area were to be designated as an historic district.

Otherwise, the HAHC shall grant the certificate of non-designation.

(c) The certificate of non-designation shall expire six months after the date of its issuance and shall be evidence that the subject of the certificate of non-designation will not be subject to the provisions of this article for a period of six months from the date of issuance of the certificate of non-designation. The certificate of non-designation shall run with the land and may not be transferred to any other building, structure, object, site, property or area.

(d) If the HAHC finds that the subject of an application does not qualify for a certificate of non-designation, the HAHC shall deny the application and shall notify the applicant in writing of the denial. If the HAHC denies the certificate of non-designation, the property shall be subject to the provisions of section 33-223 of this Code for the time specified therein.

(e) Following notice and an opportunity for hearing, the HAHC may revoke a certificate of non-designation that is found to have been issued in error.

(f) If the city council designates as a landmark or archaeological site a building, structure, object or site that is the subject of an unexpired certificate of non-designation, the designation shall not be effective until the expiration of the certificate of non-designation. If the city council designates an historic district, the designation shall not be effective with respect to an individual building, structure, object or site located within the historic district that is the subject of an unexpired certificate of non-designation until the expiration of the certificate of non-designation with respect to the individual building, structure, object or site.”

**Section 9.** That the provisions of this Ordinance, other than Section 2, shall apply to applications for designation of a landmark, protected landmark, historic district or archaeological site and applications for certificates of non-designation, as those terms are defined or used in Article VII of Chapter 33 of the Code of Ordinances, Houston, Texas, that are filed on or after the effective date of this Ordinance. Applications filed before the effective date of this Ordinance shall be governed by the former provisions of the Code of

Ordinances, Houston, Texas, which are hereby saved from repeal for the limited purpose of their continued application to previously filed applications. The provisions of Section 2 of this Ordinance shall become effective immediately upon the effective date of this Ordinance.

**Section 10.** That if any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their applicability to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 11.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on that date and shall take effect immediately upon its passage and approval by the Mayor.

**PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.**

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Mayor of the City of Houston



Prepared by the Legal Dep't \_\_\_\_\_  
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Planning and Development Department  
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